

REMARKS

This Preliminary Amendment is filed in response to the Office Action mailed on August 29, 2006, and in the Request for Continued Examination (RCE) filed on even date herewith. All objections and rejections are respectfully traversed.

Claims 1-5, and 8-11 were cancelled without prejudice.

Claims 6-7, and 12-58 are in the case.

Claims were amended to better claim the invention.

New claims 42-58 were added to better claim the invention.

Applicant respectfully requests a telephone interview with the Examiner to discuss this matter. Please call the undersigned attorney at (617) 951-2500.

At Paragraph 4 on Page 7 of the Office Action Claims 6-9, 19, 20, 35, and 41 were indicated to be allowable if written in independent form. Accordingly, these claims were written in independent form.

At Paragraph 2 on Page 2 of the Office Action Claims 1-20 and 27-41 were rejected under 35 U.S.C. 101 because the claims are to an abstract idea.

Applicant respectfully urges that the amended claims are directed to a computer data storage system which uses hardware mentioned in the claims to accomplish tasks related to operation of the computer data storage system. Accordingly, the claims are believed to be to a machine, and not to an abstract idea, and therefore allowable under 35 U.S.C. 101.

At Paragraph 1 of Page 3 of the Office Action Claims 1-5, 10-18, 21-29 were rejected under 35 U.S.C. 102 as being anticipated by Koseki *et al.* U. S. Patent No. 6,732,124 issued May 4, 2004 (hereinafter Koseki).

At Paragraph 3 on Page 6 of the Office Action Claims 30-34 and 36-40 were rejected under 35 U.S.C. 102 as being anticipated by Hitz *et al.* U. S. Patent Application No. 2004/0064474 published April 1, 2004 (hereinafter Hitz).

Koseki discloses a method for “managing the allocation of metadata volume resources on the basis of allocation management data.” The basis for using an “allocation-dirty flag” is to determine whether “one or more allocating operations have been done to the bitmap block.” Simply stated, a “dirty” [state of a bitmap block] implies that information on the memory has been modified, but the modification has not yet been reflected in the disk storage...where as [a] ‘clean’ state of a bitmap block denotes the block has not

experienced any allocation or deallocation operations.” [col. 19, lines 35 to col. 21, lines 11].

Hitz discloses a method for using data about a RAID system to position subsequent write operations to disks of the RAID system.

Applicant’s presently claimed invention, as set forth in representative claim 15, comprises in part:

15. A storage system adapted to enable write operations to a file undergoing write allocation, the storage system comprising:

a write allocation process of a file system, the write allocation process adapted to associate received file data with a buffer data control structure upon receipt of a write operation directed to the file while the file is undergoing write allocation;

a consistency point counter used to label modified data as belonging to the current consistency point or to the next consistency point, and capturing data modified for the current consistency point in the current consistency point and not capturing data belonging to the next consistency point .

Applicant respectfully urges that neither Koseki nor Hitz has no disclosure of Applicant’s claimed novel ***a consistency point counter used to label modified data as belonging to the current consistency point or to the next consistency point, and capturing data modified for the current consistency point in the current consistency point and not capturing data belonging to the next consistency point .***

Further, Applicant respectfully urges that the absence from Koseki and from Hitz of any disclosure of working with a *consistency point*, and especially the absence from Koseki and Hitz of any disclosure of a *current consistency point* and a *next consistency point* renders Applicant's claims patentable over Koseki.

Accordingly, Applicant respectfully urges that Koseki is legally precluded from anticipating Applicant's claimed novel invention under 35 U.S.C. 102 because of the absence from Koseki of Applicant's claimed novel *a consistency point counter used to label modified data as belonging to the current consistency point or to the next consistency point, and capturing data modified for the current consistency point in the current consistency point and not capturing data belonging to the next consistency point*.

Applicant respectfully urges that Applicant's new claims 42 – 58 are patentable over both Koseki and Hitz, as shown by reference to representative claim 42, which states:

42. (New) A computer implemented method for managing data to be written to a file served by a storage system, the method comprising the steps of:
having data to be written to the file, the data received from a write operation;
labeling data modified in response to the write operation as belonging to the current consistency point or to the next consistency point; and
capturing, in the current consistency point, data belonging to the current consistency point and not capturing data belonging to the next consistency point.

Applicant respectfully urges that neither Koseki nor Hitz has no disclosure of Applicant's claimed novel *labeling data modified in response to the write operation as belonging to the current consistency point or to the next consistency point; and capturing, in the current consistency point, data belonging to the current consistency point and not capturing data belonging to the next consistency point.*

Again, Applicant respectfully urges that the absence from Koseki and from Hitz of any disclosure of working with a *consistency point*, and especially the absence from Koseki and Hitz of any disclosure of a *current consistency point* and a *next consistency point* renders Applicant's claims patentable over both Koseki and Hitz.

All independent claims are believed to be in condition for allowance.

All dependent claims are dependent from independent claims which are believed to be in condition for allowance. Accordingly, all dependent claims are believed to be in condition for allowance.

Favorable action is respectfully solicited.

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No. 03-1237.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "A. Sidney Johnston", written over a horizontal line.

A. Sidney Johnston
Reg. No. 29,548
CESARI AND MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500